

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MILDRED L. HERTER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-180
Case No. 75-8933

S.S.A. No. 1

Referee's Decision No. SF-11276

The claimant appealed from a decision of a referee which held the claimant was ineligible for benefits under section 1253(c) of the California Unemployment Insurance Code.

STATEMENT OF FACTS

Based upon the record under review, we make the following findings of facts:

Both the claimant and her husband were originally residents of San Francisco. The claimant has been engaged in the food services business in such area for approximately 24 years. The claimant has reflected substantial stability in her work history. She worked for one employer as a waitress and side order cook for approximately 17 years. Her last employment, which lasted two and one-half years, was as a cook at approximately \$33.50 per shift.

The claimant's husband was employed as a security guard for a brewery in the San Francisco area. It would appear that the husband's employment entailed the same hours of work as that of the claimant.

In early 1974 the claimant and her husband moved to Rio Nido. Throughout the period following the change of residence the claimant commuted to and from the San Francisco area with her husband. Such commute continued

until June 29, 1975, when the claimant's husband was laid off for lack of work due to the closure of the brewery. Concurrent with the layoff of the husband, the claimant resigned her employment due to her inability to commute.

The claimant does not have a driver's license; she has never operated an automobile; and there is no public transportation between Rio Nido and any other community.

The record further reveals that Rio Nido and Guerneville are approximately one and one-half miles apart. These two communities have an estimated combined permanent population of 1,000 to 1,200. The documentation submitted by the Department alludes to three restaurants operating primarily on a seasonal basis. It would appear that the immediate vicinity depends for the most part upon a summer tourist trade which extends from May to Labor Day.

The hearing was held on August 28. The claimant had previously obtained a position as a cook for an indefinite period and was working as of the time of the hearing.

REASONS FOR DECISION

Section 1253(c) of the California Unemployment Insurance Code provides that a claimant shall be eligible for benefits for any week only if he or she is able to work and available for work for such week.

Ability to work is but one factor to consider within the purview of the above section and requires only that a claimant be physically able to seek out, obtain and perform services in gainful employment. It is availability for work which frequently presents problems.

A Connecticut Appellate Court has said of the corresponding provision in the law of that state:

"The availability requirement is said to be satisfied when an individual is willing, able, and ready to accept suitable work which he does not have good cause to refuse, that is, when he is genuinely attached to the labor market. Since, under unemployment compensation laws, it is the availability of an

individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual exists when there is a market for the type of services which he offers in the geographical area in which he offers them. . . . As long as no provision of the Act disqualifies him, he is entitled to its benefits . . . when he has exposed himself unequivocally to the labor market." (Reger v. Administrator (1946), 132 Conn. 647, 46 Atl. 2d 844)

In considering a claimant's eligibility for benefits under the availability provisions of our code, we construe the provision as requiring that a claimant must be available for work which there is no good cause to refuse and for which there is a potential labor market in the geographical area in which the claimant's services are offered. The test of availability may not be predicated solely upon the lack of openings for a claimant in a particular locality, but must rather be based upon whether there is a potential employment field.

Accordingly, the definition of a labor market locality will vary with the industry and occupation. The labor market locality in which he will work constitutes the basis for deciding whether or not a claimant is available for a substantial amount of work. Availability for work usually means that a claimant need not be available for work in any particular place. Ordinarily, however, he must be available for work at some place in which he has reasonable work possibilities (see Federal Security Agency, "Principles Underlying Availability for Work," December, 1945).

A claimant's eligibility under the availability provisions of the code, and in light of the interpretations which have been placed upon such provisions, must be determined in keeping with the circumstances confronting a particular claimant. Eligibility, however, may not be determined in a vacuum and in Garcia v. California Employment Stabilization Commission (1945), 71 Cal. App. 2d 107, 161 P. 2d 972, a comparable factual situation was presented to the court. There, the claimant was a seasonal employee and the denial of benefits was based upon her inability to commute to a particular job to which the claimant had been referred by the Department. The question of work refusal without good cause, as well as the claimant's availability for work, had been posed. The court held, among other

things, that the extent of the labor market must be disclosed. A claimant's experience must be developed, the accessibility of a claimant to work within her capacity must be explored, and in the absence of a suitable record, a proper determination may not be made.

In view of the foregoing construction placed upon availability, and the inadequacy of the record as developed by the instant facts, we may make no determination as to this claimant's entitlement to benefits at this time. We must therefore vacate the decision of the referee and remand it for a new hearing and a decision on the merits.

In remanding this matter for further hearing, we deem it expedient to point out that in addition to potential employers, the claimant's prior experience and her adaptability and flexibility with respect to other work should be explored. Also material to the claimant's eligibility would be her flexibility with respect to the prevailing wage which exists in her present area.

DECISION

The decision of the referee is vacated. The matter is remanded for further proceedings consonant with the views expressed herein.

Sacramento, California, January 6, 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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